

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24708 of 2000

Dated:29.11.2006

Between:

Yellarabhyulu Pedda Reddeppa and others.

...Petitioner

and

The Commissioner and others.

...Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24708 of 2000

ORDER:

The petitioners herein are the sons of one Gangulappa @ Ganganna. Ganganna in his lifetime was assigned land admeasuring Ac.1.05 cents in Survey No.247/4A situated at Chendramakulapalle Village of Punganur Mandal in Chittoor District, in 1972. On an allegation that he alienated the land in contravention of the conditions of assignment, the Mandal Revenue Officer, the fourth respondent herein, initiated action under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'), and after issuing show cause notice, passed orders on 19.11.1990 resuming the land. By then, Parvathamma, who had purchased the land from Ganganna on 30.01.1974 under registered sale deed had transferred the land in favour of the fifth respondent under an agreement of sale dated 05.10.1978, and the fifth respondent was in possession of the land.

Aggrieved by the resumption order, the petitioners preferred an appeal under Section 4-A of the Act before the third respondent. While the appeal was pending, the Mandal Revenue Officer, considering the claim of the fifth respondent that he is also a

landless poor person, passed orders on 31.12.1990 reassigning the land. The appeal filed by the petitioners was dismissed on 12.12.1991, and they were also unsuccessful before the revisional authority, namely the Joint Collector, who dismissed the revision by order, dated 15.12.1995, and also before the second revisional authority, namely the Chief Commissioner of Land Administration. The petitioners, however, filed the present Writ Petition seeking a writ of mandamus directing respondents 1 to 4 to take possession of the land from the fifth respondent and restore the same to the petitioners in accordance with Section 4(1) of the Act.

A counter affidavit is filed stating that the petitioners' father sold away the land to Parvathamma, and therefore, the land was resumed and reassigned to the fifth respondent who is also landless poor person. The suit filed by the petitioners, being O.S.No.207 of 1990, as against the fifth respondent was dismissed, and the suit filed by the latter against the former, being O.S.No.524 of 1989, was allowed granting injunction, by the learned Principal District Munsif, Punganur. The other allegations made by the petitioners are denied.

Learned Counsel for the petitioners placed strong reliance on the decision of the Division Bench of this Court in **Rayavarapu Palakondaiah v. Revenue Divisional Officer**^[1] in support of the contention that it is incumbent on the part of the Mandal Revenue Officer to restore the land to original assignee or his legal heirs under Section 4(1)(b) of the Act. **Per contra**, the learned Assistant Government Pleader for Revenue (Assignment) and the learned Counsel for the fifth respondent submit that Section 4(1)(b) of the Act has no application to this case, as the fifth respondent was assigned land on 31.12.1990 after the land was resumed from the petitioners. They also pointed out that late Ganganna sold away the land to Parvathamma under sale deed dated 30.01.1974, and that the petitioners or their predecessors are not in possession of the land for the last thirty years.

The scope of Section 4(1)(b) of the Act has been considered by this Court in a recent judgment in **Yellamma v. State of A.P.**^[2]. After referring to earlier judgment of this Court in **P.Gopal Reddy v.**

Mandal Revenue Officer^[3], this Court held that unless it is reasonably practicable to restore the land to the assignee or legal heirs, the Mandal Revenue Officer cannot be compelled to restore the land to the assignee. It was held therein as under.

...Section 4(1)(b) of the Act must be read as enabling an assignee, who suffered an order of resumption under Section 4(1)(a) of the Act, only when the land which was resumed is available for assignment and when it is reasonably practicable to restore the land to the assignee or the legal heir. There could be number of situations when it may not be reasonably practicable to restore the land to the assignee even if the land is available. In *P.Gopal Reddy v. Mandal Revenue Officer* (supra), His Lordship Justice K.Ramaswamy (as His Lordship then was) considered a similar question. Dealing with this aspect of the matter, it was laid down as under.

10. Ejectment of the persons in possession of the assigned lands under the void transfer is mandatory save as covered by Sec.3(5) of the Act. The Collector or the authorized officer is enjoined to have the transferee ejected and restitute possession only once to the assignee or his legal heirs if available. The restitution to the assignee or his heirs, in the first instance, despite the contravention by the assignee, is mandatory. In case he commits contravention once over, it is mandatory that the State shall resume the land, but in either case, the assignment of the said land "shall be to another landless poor person for the purpose of cultivation or in case of assignment for house site, for the purpose of construction of house for residence which is a fundamental right under Article 19(1)(e). The petitioner, thereby, is normally entitled to restoration of possession. The question then emerges is whether the Collector is justified in his failure to restitute the land to the petitioner.

11. It is seen from the undisputed facts that though the land in question was assigned only for the purpose of cultivation, it no longer subserves the original purpose viz., cultivation as it now became the Urban property fit for construction of houses. In fact, the transferee laid 32 plots and sought approval from the second respondent. By virtue of the changed circumstances, the petitioner will no longer be in a position to cultivate the assigned land. His transfer for the

purpose of house sites again would be in contravention of not only under the terms of the grant, but also is void under the Act. Thereby, the petitioner cannot be restituted the assigned lands.

The Division Bench in **Rayavarapu Palakondaiah v. Revenue Divisional Officer** (supra) also took a similar view. It is apposite to excerpt the following from the judgment of the Division Bench.

...Section 4 provides that on satisfaction that the provisions of the 1977 Act have been contravened, the authority may by order take possession of such assigned land after evicting the person in possession in prescribed manner and restore the assigned land to the original assignee or his legal heir. It is only when it is not reasonably practicable to restore the land to such original assignee or his heir, the authorities can resume the assigned land for re-assigning to landless poor persons in accordance with the Rules for the time being in force. The proviso says that restoration of such assigned land shall not be done to the original assignee or his legal heir on more than one occasion, meaning thereby that if the original assignee transfers the land in violation of the provisions of 1977 Act, the authorities can restore the land back to him on one such error committed by him. After the original assignee is put back in possession if he transfers the said land on second occasion, then the original assignee will not be given back the possession but the land would be resumed back...

The restoration of land to the original assignee or the legal heirs of the assignee is in a situation where it is reasonably practicable to restore the land to the said assignee. In this case even if the appeal filed by the petitioners was disposed of, the land was reassigned to the fifth respondent and the petitioners were admittedly not in possession since 1974. Some dispute is raised by the learned Counsel for the petitioners that the fifth respondent is not a landless poor person and therefore, assignment of land to him is illegal. This is a new aspect of the case raised for the first time, and therefore, this Court is not inclined to permit the petitioners to raise the same. The petitioners never raised such a ground before the appellate authority or two revisional authorities.

In this case the fifth respondent or his predecessors are in possession of the land since 1974, and therefore, it is a case, which falls within the category of “not reasonably practicable”, and therefore, the petitioners have no enforceable right. The petitioners claim to be landless poor persons, and therefore, they may make appropriate application to the fourth respondent seeking suitable land for assignment.

The Writ Petition is accordingly dismissed. No costs.

(V.V.S.RAO, J)

29.11.2006

vs

[\[1\]](#) 1999(3) ALT 128 (D.B)

[\[2\]](#) 2006(5) ALD 265

[\[3\]](#) 1990(1) An.WR 205 = 1989(3) ALT 14 (NRC)